IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.173 OF 1996

The State of Maharashtra ..Appellant
(Orig.Complainant)
Versus

1. Anant Tukaram Dhangade & ors ..Respondents

Ms.M.H.Mhatre APP for State

Mr.S.B.Shetye with Ms Deepti Wadkar for Respondent nos. 1 to 4.

CORAM : R.S.MOHITE, J

DATE : 26th November, 2007

ORAL JUDGMENT

1. This appeal filed by the State of Maharashtra impugns the judgment and order passed by the Chief Judicial Magistrate, Ratnagiri on 19th October, 1995 in Regular Criminal Case No. 317 of 1992 pertaining to offences under sections 323, 326, 504, 506 read with section 34 IPC. I have perused the impugned judgment and the entire record and I find that the reasoning of the trial Court cannot be said to be perverse or of a nature which requires interference in an appeal against acquittal.

2. The prosecution case was that on 16th October, 1992 an incident took place during the festival of Navratri when the present accused persons threatened PW 2 Nitin Lagade who is the injured in the present case. For

several days, Nitin was not going out of his house. He ventured out of the house on the date of the incident i.e. 16th October, 1992. On that date, the accused persons accosted him on the road. According to the first informant, Dipak who is real brother of Nitin and who claimed to be in the court-yard of the residential house of his father, when he he heard his brother Nitin shouting for help and running on the road. He went to help him. From a distance of about 10 feet he saw Nitin being beaten by the accused persons. Accused Balkrishna was having a pharashi Accused Umakant was having a koyati. Accused Prabhakar and Anant were having sticks. He saw Balkrishnag inflicting a blow of pharashi on the head of Nitin, Umakant inflicting blows with the help of a koyati on the eye brows, lips and hands of Nitin as a result of which the eye brows, lips and fingers were cut. He saw Prabhakar and Anant giving blows on Nitin on his legs and all over the body of the Nitin. According to the prosecution, the incident was also witnessed by PW 5 Nirmala Gurav who is the mother-in law of the first informant Dipak and PW 6 Vaijayanti Gurav who was wife of the brother-in-law of the complainant. The last witness was PW 7 Dipak who was the complainant. The prosecution did not examine any other independent witness and it is clear that all the witnesses examined were close relatives of the injured Nitin.

3. To prove the injuries on Nitin, the prosecution

examined PW 9 Dr.Moreshwar Dange. Dr.Dange found the following injuries on the person of Nitin :

1. Incised wound on left eye brow 3 cms x 3 cm skin deep;

2. Incised wound over left eye brow, 2 cms x 1 cm skin deep.

3. Incised wound on upper lip measuring 3 cms x 1 cm muscle deep.

4. Incised wound on lower lip, 3 cms x 2 cm.

5. Temporal haemotoma of left temporal region. Xray of skull A.P. and lateral was taken vide G.R.No. 2881/82. X-ray shows fracture of left temporal region.

He opined that all the injuries found by him were due to sharp and hard object.

4. From the aforesaid, it can be seen that there are no injuries caused by sticks on the person of Nitin. Two incised injurys nos. 1 and 2 are only skin deep and there is considerable doubt as to whether it can be caused by axe/koyati as deposed to by the relatives of the injured. Injury no.3 is just on the lip and cuts muscle. The depth of injury no.4 is not given. It appears that fracture on the skull is the only serious injury. Even this injury according to the doctor, was due to sharp and hard object. In his evidence, it is not clearly brought out whether injury no.5 was caused due to a separate weapon or blow. The weapons which were used and which are said to have been seized were not shown to the doctor inorder to assert whether the

injuries could be caused by the weapons shown to have been seized. The weapons seized were not sent to the Chemcial Analyst for a report.

5. No doubt PW 5, 6,and 7 are Nirmala Gurav, Vaijayanti Gurav,Dipali Logade repeat the versions of Dipak but, their ocular evidence has the same lacunas as mentioned aforesaid when compared with the medical evidence. PW 2 Nitin Logade who was the injured witness was in Civil hospital, for two weeks and was thereafter taken to Bombay and was admitted in KEM Hospital for a week. His statement was recorded 15 days after the incident. It cannot be said that the view taken is not a possible view. The Court has given the benefit of doubt to the accused. In my view, this is not a fit case to interfere in an appeal against acquittal. Hence, appeal stands dismissed.

(R.S.Mohite, J)